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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CALVIN ANTHONY WORLDS,

Defendant and Appellant.

E070459

(Super.Ct.No. INF039024)

OPINION

APPEAL from the Superior Court of Riverside County. David A. Gunn, Judge.
Reversed.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, and Steve Oetting, Allison Acosta,
and Matthew Mulford, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant, Calvin Anthony Worlds, filed a petition pursuant to Penal Code section 1170.18¹ seeking reduction of his conviction for second degree burglary to a misdemeanor, which the court denied. On appeal, defendant contends the court erred in denying his petition. We reverse.

I. FACTUAL AND PROCEDURAL HISTORY²

The police report recounts that defendant forged, passed, and possessed a number of checks in varying amounts, several of which appear to have gone uncharged. At one

¹ All further statutory references are to the Penal Code.

² As part of defendant's guilty plea, the court found a factual basis for the plea as recited in the minute order: "Court finds factual basis for: PLEA – IN COURT." The reporter's transcript of the plea is not included in the record; thus, we have no information of what the factual basis of the plea consisted. With respect to the section 1170.18 petition, the court, apparently on its own motion, reviewed the police report prior to scheduling a hearing on the petition: "Court has Police rpts. but cannot determine value of checks in counts 1 and 2. PD apptd."

Normally, only where the defendant has stipulated that an officer's statements in a report could be used to demonstrate the factual basis of a conviction may the officer's hearsay statements be used to establish the conduct underlying the conviction. (*People v. Saez* (2015) 237 Cal.App.4th 1177, 1196-1197; accord, *People v. Denard* (2015) 242 Cal.App.4th 1012, 1028-1030; but see *People v. Sledge* (2017) 7 Cal.App.5th 1089, 1096-1098 [hearsay contents of probation officer's report sufficiently reliable to prove defendant's ineligibility for relief pursuant to § 1170.18].) A later court "'is generally limited to examining the statutory definition, charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented'" when addressing any issue of disputed fact. (*People v. McGee* (2006) 38 Cal.4th 682, 707, quoting *Shepard v. United States* (2005) 544 U.S. 13, 16; *People v. Bradford* (2014) 227 Cal.App.4th 1322, 1339-1340 [Proposition 36 did not permit the court to rely on any "facts" found outside the record of conviction].)

However, a party's failure to object to a document's admission below may forfeit the issue of its admissibility on appeal. (*People v. Denard, supra*, 242 Cal.App.4th at p. 1028, fn. 8; accord, *People v. Sledge, supra*, 7 Cal.App.5th at p. 1097 [failure to object to admission of probation officer's report at hearing on defendant's § 1170.18 petition forfeited the issue of its inadmissibility on appeal]; *People v. Abarca* (2016) 2

[footnote continued on next page]

point, defendant told an officer he had cashed “about \$3,000 worth of bad checks” from a particular victim’s account. Defendant also appears to have made \$3,937.70 in fraudulent credit purchases which apparently also went uncharged, at least in this case. However, none of the forged or passed checks alone exceeded \$950; the highest individual check amount listed in the police report is for \$867.81.

The People charged defendant with two counts of burglary (§ 459; counts 1 & 3) occurring at separate banks on separate dates; three counts of possession of forged checks (§ 475, subd. (a); counts 2, 4, & 5); and one misdemeanor count of appropriation of lost property, a wallet (§ 485; count 6). The People additionally alleged defendant had suffered a prior prison term. (§ 667.5, subd. (b).) The count 1 charge specifically alleged burglary of Guaranty Bank, 420 South Palm Canyon Drive between October 3 and 5, 2001.

On November 27, 2001, defendant pled guilty to the counts 1 and 2 offenses; in exchange, the remaining counts and allegation were dismissed. Pursuant to the plea agreement, the court sentenced defendant to the low term of 16 months of incarceration on count 1 and a concurrent 16-month term on count 2.

On August 16, 2017, defense counsel filed a petition pursuant to section 1170.18 seeking reduction of his conviction on count 1 for second degree burglary to a

Cal.App.5th 475, 480 [the People’s failure below to object to the sufficiency of defendant’s § 1170.18 petition after being expressly given the opportunity to do so forfeited any contention on appeal that defendant failed to establish a prima facie case for eligibility].) The People did not object to the court’s consideration of the police report below nor do they object to it on appeal. Thus, we take our factual recitation from the police report and rely on it for our analysis of the issue raised on appeal.

misdemeanor. Defense counsel checked a box on the form petition reflecting the belief that the value of the check did not exceed \$950. The People submitted a response dated November 6, 2017, contending defendant was not entitled to the relief requested because he had “failed to meet [his] burden.”

On December 1, 2017, as noted above, the court ordered a hearing on the petition because it had reviewed the police reports and could not determine the value of the checks in counts 1 and 2. At the hearing on March 8, 2018, defense counsel argued with respect to both counts 1 and 2: “The circumstances are the same for both counts, so I will be arguing them jointly. This individual had gone into a bank using fraudulent checks on three days, the 3rd through the 5th. Each of those checks, although they are \$500 for each check, which would be in looking at the face value of it, it is my position that is not what the Court should consider in determining the value of the theft. The value of the theft is simply meaningless, nominal in an amount, and clearly be far less—it would be the value of replacing one’s checks.”³ The People responded: “On these two counts the value is over [\$]950. They are actually \$1,570 as to both counts. I know that the Court has been using the amounts on the check to prove the matters. So on both of these, it is the People’s position that as to both counts the defendant did go over the \$950 amount.” The court denied the petition without explanation.

³ Defense counsel’s position below that the value of the checks should be measured by their replacement cost has been discredited by a recent California Supreme Court decision. (*People v. Franco* (2018) 6 Cal.5th 433, 439 [“The amount written on the check is generally the best indicator of the extent of the intended fraud, and thus of the severity of the crime.”].)

II. DISCUSSION

Defendant contends the court erred when it denied his petition to reduce his conviction for commercial burglary in count 1 to a misdemeanor because none of the checks of which he was convicted of forging were valued at more than \$950. We agree.

“In 2014, California voters approved Proposition 47, the Safe Neighborhoods and Schools Act, which reclassified as misdemeanors certain drug-related and theft-related offenses that had previously been classified as felonies or wobblers. As relevant here, Proposition 47 added a section to the Penal Code creating a new offense of misdemeanor shoplifting. Section 459.5, subdivision (a) provides, in pertinent part: ‘Notwithstanding Section 459 [the burglary statute], shoplifting is defined as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950). Any other entry into a commercial establishment with intent to commit larceny is burglary.’ With certain exceptions not relevant here, the offense is punishable as a misdemeanor. [Citation.]” (*People v. Colbert* (2019) 6 Cal.5th 596, 599.)

“Proposition 47 also created a mechanism for extending its benefits to criminal defendants who, like defendant in this case, had been sentenced before the initiative’s passage. As relevant here, Penal Code section 1170.18, subdivision (f) provides: ‘A person who has completed his or her sentence for a conviction . . . of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at

the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.’ If the offender meets the statutory criteria, ‘the court shall designate the felony offense or offenses as a misdemeanor.’ [Citation.]” (*People v. Colbert, supra*, 6 Cal.5th at pp. 599-600.) A “defendant’s act of entering a bank to cash a stolen check for less than \$950, traditionally regarded as a theft by false pretenses rather than larceny, now constitutes shoplifting under the statute.” (*People v. Gonzales* (2017) 2 Cal.5th 858, 862.)

“Proposition 47 changed the [burglary] law by defining a new crime of misdemeanor shoplifting and, in effect, ‘carving out’ this ‘lesser crime’ from the ‘preexisting felony.’ [Citation.] The statute provides that any act involving ‘entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed [\$950]’ is punishable only as misdemeanor shoplifting, not burglary. [Citations.]” (*People v. Colbert, supra*, 6 Cal.5th at p. 602.)

A court errs in aggregating the amounts of multiple forged checks for purposes of denying a defendant relief pursuant to section 1170.18. (*People v. Salmorin* (2016) 1 Cal.App.5th 738, 745-754 [defendant convicted of one count of forgery of multiple checks, none of which individually exceeded \$950, but in the aggregate were valued at more than \$950]; *People v. Hoffman* (2015) 241 Cal.App.4th 1304, 1310 [court erred in aggregating amounts of checks in case in which defendant pled guilty to seven counts of

forgery where no individual check on any individual count exceeded \$950]; but see *People v. Aguirre* (2018) 21 Cal.App.5th 429, 431 [aggregation of numerous forged bills valued at \$1,130, none of which were valued individually at more than \$950, permissible when denying defendant's § 1170.18 petition].)

Here, it appears from the police report that the checks defendant passed which constituted the offense(s) alleged in count 1 were in the amounts of \$540.70, \$530.17, and \$520.70, all passed at Guaranty Bank between October 4 and 9, 2001, for a total value of \$1,591.57.⁴ Thus, since none of the checks could individually be valued at more than \$950, the court erred in denying defendant's petition.

⁴ At oral argument, appellant's counsel took issue with our representation that defendant had pled guilty to three separate acts under the count 2 charge. We acknowledge that the complaint alleged defendant had committed "a" violation of section 459 by entering Guaranty Bank between October 3, 2001, and October 5, 2001. We further agree that this alone could be interpreted as one, single instance of passing a single fraudulent check. Nonetheless, the court rendered factual findings, based upon the police report to which neither party objected, that the offense included *three* separate instances of passing fraudulent checks. The police report supports this finding, indicating defendant passed three checks in the amounts of \$540.70, \$530.17, and \$520.70, at Guaranty Bank between October 4 and 9, 2001. Moreover, defense counsel below argued defendant "had gone into a bank using fraudulent checks on three days, the 3rd through the 5th. Each of those checks, although they are \$500 for each check" Furthermore, defense counsel below failed to provide the court with the factual basis for the plea. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 880 [the petitioner bears the burden of proof to show the factual predicate for eligibility for reclassification under § 1170.18].) Finally, appellant's counsel has not provided this court with the factual basis for defendant's plea. We note it is not uncommon for a defendant to be convicted of multiple criminal acts in a single count. (*People v. Salmorin, supra*, 1 Cal.App.5th at pp. 745-754 [defendant convicted of one count of forgery of multiple checks].) Thus, defendant has forfeited, at least for the purposes of this appeal, any contention that the offense to which he pled involved only the passing of a single fraudulent check. (See *People v. Abarca, supra*, 2 Cal.App.5th at pp. 482-483.)

III. DISPOSITION

The court's order denying defendant's petition for reduction of his commercial burglary conviction under section 1170.18 is reversed, and the matter is remanded with directions to grant the petition.

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MCKINSTER
J.

We concur:

RAMIREZ
P. J.

MILLER
J.